Supreme Court, U.S.
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No. 99-2090

IN THE

Supreme Court of the United States

VESSEL MY GIRLS and JOHN N. SINGLETON,

Petitioners,

v.

MARINA MANAGEMENT SERVICES, INC., d/b/a/ JAMES CREEK MARINA as Agent for MIF REALTY, LP,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF OF PETITIONERS

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REPLY BRIEF

Petitioner John N. Singleton (hereinafter "Singleton" or "Petitioner") has been forced to endure nearly four years of litigation brought by Marina Management Services, Inc. (hereinafter "Marina Management"), during which Singleton's boat was arrested and he was required to post a bond and pay Marina Management $7,663.21 for the release of his boat. During this time, Singleton incurred legal costs in defending the claims of Marina Management for backdated transient boat storage fees of $918 a month, which were never charged to Singleton, and for attorneys fees pursuant to two written contracts, which were never in evidence. After all this litigation, it was finally determined that Marina Management had no legal claim and was not the real party in interest.

Now, MIF Realty L.P. (hereinafter "MIF"), the real party in interest, has come forward in this Court for the first time, arguing that the case is moot, because MIF is planning to "substitute" itself for Marina Management and dismiss all of Marina Management's claims against Singleton, thereby ending the litigation.

Allowing MIF to be substituted for Marina Management, in order to extricate itself *and* Marina Management from what Marina Management has done, would be fundamentally unfair and contrary to the Federal Rules of Civil Procedure. Such a maneuver would leave Singleton with a substantial legal bill, uncompensated damages and the loss of $7,663.21. Singleton paid $7,663.21 pursuant to a district court order to a "person" (Marina Management) who had no legal right to seize the boat and no legal right to the $7,663.21 because it was not the real party in interest.

Under MIF's plan, Singleton would be without a remedy because the sanctions against Marina Management, imposed by the district court, were set aside by the court of appeals and the district court dismissed Singleton's counterclaims as frivolous under Rule 11. This latter Rule 11 holding was affirmed by the court of appeals under an abuse of discretion standard.

This case is not about a man and his boat and a claim by a marina for boat storage fees. This case is about due process to be effectuated by a proper application of the Federal Rules of Civil Procedure, specifically Rules 11, 17 and 25. Rule 17 does not permit MIF to do what it proposes. There is no basis in this Court or in the district court for MIF to be substituted as a party respondent or party plaintiff.[1]

RULE 17

The 1996 Amendments to Rule 17 were not intended to, and do not, make any substantive changes in the application of the Federal Rules governing joinder or substitution. All the 1996 Amendments did, as the Advisory Committee's Notes show, is to protect a real party in interest from the expiration of the statute of limitations, codifying the rulings in *Levinson v. Deupree*, 345 U.S. 648 (1953), and *Link Aviation, Inc. v. Downs*, 325 F. 2d 613 (D.C. Cir. 1963). *Levinson* allowed "substitution" and *Link Aviation* allowed "joinder." Now, as before, only a person with a substantive claim may prosecute the claim. Depending upon the circumstances, a real party in interest can enter the case either by filing a new action (which will not be time-barred) or, if permitted by Rules 19 or 20, by

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[1] Marina Management has not opposed Singleton's petition. However, the opposition of MIF and its counsel, as amicus, would ensure that the important issues in this case are well-briefed and explored. MIF is not a party and has no legal standing to file an opposition under the rules of the Court.

"joinder" or, if permitted by Rule 25, by "substitution." That is all Rule 17 says. Rule 25 still governs substitution. It does not allow MIF to be "substituted," inasmuch as there was no death of a party, incompetency of a party or change of public office holder. Fed. R. Civ. P. 25. Furthermore, substitution, because of a transfer of interest, is simply inapplicable. Marina Management has no interest to transfer to MIF.

Although MIF may commence a new action, it apparently does not wish to do so.

Subject to the reimposition of sanctions against Marina Management, which were erroneously set aside by the court of appeals, and subject to additional sanctions, which may be imposed by the district court for Marina Management's conduct, and subject to Singleton's counterclaims (which Singleton requests the Court to allow), Marina Management's complaint must be dismissed because it is not the real party in interest.[2]

Singleton never argued that MIF should be substituted. Singleton argued only that MIF is the party which has the legal claim to be prosecuted and is the proper party plaintiff to prosecute a claim for boat storage fees, not Marina Management.

Contrary to Federal Rule 17, the court of appeals held that Marina Management, despite the fact it was merely an agent and not the real party in interest, could continue with the action

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[2] MIF mistakenly invoked the venerable admiralty doctrine that a cargo owner's agent may libel in his own name, as agent, or on behalf of the distant cargo owner. *Houseman v. Cargo of The Schooner North Carolina*, 40 U.S. (15 Pet.) 40 (1841). This doctrine has been applied only to cargo owners' agents. It has never been applied to a marina, port owner, concessionaire or their agents for the collection of fees for marina services. It is inapplicable to the present case.

if the real party in interest, MIF, consented to or authorized the action. This decision is in conflict with the decisions of the other circuits which hold that an action must be brought by the real party in interest.

MIF's argument that the case is moot has no basis in law. MIF's mangled reading of the Rule 17(a) Amendments, along with the confused application of the Amendments by U.S. courts of appeals in the cases cited by both Singleton and MIF, strongly indicate that the courts and practitioners require the Court's guidance on the proper construction of Rule 17(a) and, in particular, the 1996 Amendments to the Rule, which have never been addressed by the Court.

RULE 11

Petitioner Singleton does not dispute that dismissals of claims have been upheld under Rule 11 in the face of recalcitrant conduct by a party or his attorney. This is not the issue for which Singleton seeks review. The issue of this petition concerns the review standard to be applied when a district court dismisses a party's claims under Rule 11 as frivolous and designed to harass, depriving a person of his day in court. The proper test, as repeatedly stated by the Court and the Second Circuit, is that, upon review, it must be patently clear that a claim has absolutely no chance of success and is not well-grounded in law and fact. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Sussman v. Bank of Israel*, 56 F.3d 450, 457 (2d Cir.), *cert. denied sub nom. Bank of Israel v. Lewin*, 516 U.S. 916 (1995). This was not the standard of review applied by the court of appeals in this case.

MIF, in its Brief in Opposition, implies that the district court found that Singleton's counterclaims were "legally deficient." While MIF may be trying to characterize the district court's finding of "frivolousness," as "legally deficient," the

district court at no time examined Singleton's counterclaims or made findings setting forth why any of the counterclaims were "legally deficient," "frivolous" or "fraudulent."[3]

The court below misapplied the abuse of discretion standard set forth by the Court in *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990), to a dismissal of an action under Rule 11. Dismissal of a party's claim was not the issue in *Cooter & Gell*. In *Cooter & Gell*, the Court established a deferential standard of review of Rule 11 sanctions with respect to conduct of counsel and parties, such as the sanctions imposed in this case on Marina Management by the district court. However, the court below ignored the deferential standard which was applicable to Marina Management's conduct while, at the same time, erroneously embraced a deferential standard to uphold dismissal of Singleton's claims under Rule 11.

The decisions of the court below are contrary to decisions of the Court and the Second Circuit. On their face, the counterclaims of Singleton are arguably valid in law and fact and should not have been dismissed under Rule 11 and the dismissal should not have been upheld by the court of appeals under an abuse of discretion standard of review.

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[3] MIF has misquoted, in a prejudicial way, the district court's finding. MIF states: "The February order also noted that Singleton's counterclaims, which threaten to delay the immediate resolution of a case involving admittedly unpaid boat dock fees, appear to be mostly *fraudulent* and designed primarily to harass." MIF's Brief in Opposition, p. 6, 10 The district court actually held: "[D]efendants' counterclaims, which threaten to delay the immediate resolution of a case involving admittedly unpaid boat dock fees, appear to be mostly *frivolous* and designed primarily to harass." (Pet. App. 42a).

FINDING OF FACTS BY THE COURT OF APPEALS

In the litigation, Singleton's counsel charged that Marina Management submitted to the district court a false statement of account detailing fees that were owed, which in fact were never charged to Singleton. On the basis of that false statement, the district court had ordered Singleton's boat arrested with the result that a general bond was set in an amount Singleton could not afford. The district court later sanctioned Marina Management for misleading the court. In fact, at no time in the case did Marina Management submit any evidence (except a verified complaint) that there were written contracts covering the periods for which Marina Management was claiming transient fees of $918.00 per month. The only contract Singleton signed, which was in evidence, expired by its terms on March 31, 1995. That contract was with Washington D.C. Associates which went bankrupt. Thereafter, MIF acquired the concession rights to the marina, effective September 1996. (*See* Pet. 6a). There was no evidence in the record that a written contract providing for transient fees and attorneys' fees existed between Singleton and Washington D.C. Associates beyond March 1995.

The existence of such an executory contract with Washington D.C. Associates, which could be assumed by MIF Realty in the bankruptcy proceeding of Washington D.C. Associates, was crucial to *any* legal claim to pre-October 1996 fees. Without such an executory contract, MIF would be entitled to fees, on a *quantum meriut* basis, of $190 a month only from October 1996 to March 1997.

Needing such a contract, Marina Management apparently, by photocopy techniques, created a 1996 contract allegedly "signed" by Singleton which was actually reproduced from the 1994 contract Singleton did sign. The signature is exactly the same on both documents because it is the same. (*See* Rep.

App. 1a.) This altered contract was never submitted as evidence by Marina Management.

In the present case, the court of appeals, without any evidence, found that Singleton executed the 1996 contract. The court of appeals also found that the district court was misled by the colloquy of counsel, something the district court never said or held. This was a "finding" contrary to the evidence in the case contained in the verified complaint of Marina Management. Fact finding, based upon colloquy of counsel, or for any other reason, is outside the role of the court of appeals as a court of review. While the 1996 "contract" was only recently disclosed by Marina Management and was not before the court of appeals, it is illustrative of the reasons why factual issues should be decided by trial courts, upon evidence.

CONCLUSION

This case involves important questions of law regarding the standard of review of the Rule 11 sanction of dismissal, the power of the court of appeals to make findings of fact and, finally, the proper application of Rule 17(a), particularly in respect to the 1996 Amendments to Rule 17(a), which have never been addressed by the Court.

For the reasons set forth herein and in the petition itself, petitioner urges that its petition for a writ of certiorari be granted. Petitioner also urges that the Court grant MIF's motion to appear as *amicus*.

Respectfully submitted,

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